

Appeal from decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring placer mining claims null and void. AA-47537 and AA-47538.

Affirmed.

1. Mining Claims: Lands Subject to--Segregation--State Selections

Where the public records indicate that land is segregated from appropriation by the filing of a state selection application, a mining claim located on such land is properly declared null and void ab initio.

APPEARANCES: William Mrak, for appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

William Mrak and others 1/ appeal from a March 19, 1984, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), declaring the Craigie Bench Nos. 1 and 2 placer mining claims null and void ab initio and rejecting the recordation filings for these claims. Notices of mining claim location for the subject claims were filed with BLM on March 2, 1982. The notices state that the claims were located on February 20, 1982, within an area described as the SW 1/4, sec. 3, T. 19 N., R. 1 W., Seward Meridian, Alaska. BLM found that the subject land was selected by the State of Alaska under application A-058730 (filed February 18, 1963), A-058957 (filed April 8, 1963), and AA-2036 (filed August 17, 1967). Departmental regulation, 43 CFR 2627.4(b), 2/ provides that land selected by the State of Alaska in

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1/ Mrak's co-locators and fellow appellants are James S. Hermon, Ben H. Hermon, and Ronald Aklestad.

2/ 43 CFR 2627.4(b) reads:

"(b) Segregative effect of applications. Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the proper office properly describing the lands as provided in § 2627.3(c)(1)(iii), (iv), and (v). Such segregation will automatically terminate unless the State publishes first notice as provided by paragraph (c)

fulfillment of certain statutory entitlements is segregated from location under the mining laws. BLM ruled the subject lands closed to mineral entry and declared the claims to be null and void ab initio in its March 19, 1984, decision. Because the claims were considered to be without legal effect, BLM also rejected claimants' recordation filings.

Appellants' appeal consists of the following statement: 3/

Our reason for appeal is stated in Exhibit "D" - the area is not under the jurisdiction of the State of Alaska. Therefore, the area must still be under Federal jurisdiction.

We have faithfully attempted to comply with both the State and Federal Government. We feel that the claims are still under Federal jurisdiction and that we have a valid filing under the Federal mining laws.

Appellants' exhibit D is a letter from the State of Alaska, Department of Natural Resources, dated May 25, 1982, returning claimants' 1981 affidavit of annual labor and informing them that "these claims are located within Power Project 297 and [are] not under the jurisdiction of the State of Alaska."

Appellants also assert that their claims are the refiling of claims previously submitted to BLM. The exhibits supplied by appellants show that two placer mining claims, Craige [sic] Bench and Willow Bench, were located by Judith Aklestad on April 5, 1969, in the general vicinity where appellants' claims are now located. On December 15, 1976, Aklestad, along with appellants and others, applied for survey of those two claims and 29 others as part of the Mrak Placer Mining group. The two claims were identified by BLM in a letter to Mrak dated April 15, 1977, as unavailable for mineral patent because the State of Alaska's selection application A-058730 predated them. Thereafter, evidence of the Craige Bench and Willow Bench mining claims was apparently filed by Mrak with the State of Alaska, which returned it with the letter identified as exhibit D. 4/

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fn. 2 (continued)

of this section within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management."

(Italics in original.) This regulation is repeated almost verbatim at 43 CFR 2091.6-4.

When the State submitted the first of its applications in 1963 pertaining to the subject lands, this regulation appeared in similar form at 43 CFR 76.16 (1963). In 1967, it was found at 43 CFR 2222.9-5(b) (1967).

3/ The document filed with BLM on Apr. 19, 1984, was titled "Notice of Appeal," but it was not followed by a separate statement of reasons. It is very brief and contains only the short statement set forth here and a brief chronological summary of the six accompanying exhibits.

4/ Appellants' claims cannot be considered amended locations or relocations of the Craige Bench and Willow Bench placer mining claims. First, there is no reference in appellants' notices of locations for Craige Nos. 1 and 2 to the prior claims. Second, a review of the respective notices shows that the

[1] Appellants assume that because the subject land is still under the jurisdiction of the United States it is available for mineral locations. From a review of the record, we find that appellants' claims are situated on land encumbered by several segregative actions. The first of such actions is noted on the master title plat to commence on April 11, 1922, and is identified as Power Project 297. The title plat records show that this proposed power project encompassed all lands within 1/8 mile of Craigie Creek between 2,200 and 2,700 feet elevation and was not vacated by the Federal Power Commission until January 5, 1973. <sup>5/</sup> Section 24 of the Federal Power Act of 1920, as amended, 16 U.S.C. § 818 (1982), provides that any land included in a proposed power project is reserved from entry, location, or disposal under Federal laws. Thus, when the State of Alaska filed its several selection applications for lands in T. 19 N., R. 1 W., Seward Meridian, the land within the proposed power project was closed to such appropriation.

Congress, however, reopened land withdrawn or reserved for power development to mineral entry in 1955, except in certain instances inapplicable here, under the Mining Claims Rights Restoration Act, 30 U.S.C. § 621(a) (1982). <sup>6/</sup> According to the record, both claims are within the designated area of Power Project 297. However, the fact that those portions of the State's selection applications pertaining to the subject land were invalid because of Power Project 297, did not render it available for mineral entry by appellants. In John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (1981), the Board clearly explained as follows why the Department could not recognize mining claims on Alaskan land segregated by the filing of a State selection application:

In State of Alaska, Kenneth D. Makepeace, 6 IBLA 58, 68, 79 I.D. 391, 396 (1972), we applied the notation rule stating that "an entry outstanding on the proper records of the land office, even though the entry may be void or voidable precludes the appropriation of the land until it is canceled on such records." We noted that the court in Kalerak v. Udall, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969), had left open the question of the applicability of the notation rule to void or voidable state selections. Finally, we stated that noting a state selection application on a title plat amounts to a "prima facie appropriation of the land." State of Alaska, Kenneth D. Makepeace, supra at 70, 79 I.D. at 396 (emphasis in original).

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fn. 4 (continued)

claims differ greatly in size, dimensions, and reference points. The only common factor is that the former and the latter claims are situated along with the Craigie Creek in the same general area.

<sup>5/</sup> We also note that prior to revocation of Power Project 297, Public Land Order No. 5186 withdrew, subject to valid existing rights, T. 19 N., R. 1 S., Seward Meridian, from all forms of appropriation except for location and entry for metalliferous minerals, effective Mar. 15, 1972. See 52 FR 5589 (Mar. 16, 1972).

<sup>6/</sup> The purpose of this Act is "[t]o permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development." P.L. 84-359, ch. 797, 69 Stat. 681 (Aug. 11, 1955).

Such a prima facie appropriation segregates the land from all subsequent appropriations, including locations under the mining laws "regardless of whether that selection was valid, void, or voidable. See State of Alaska, Kenneth D. Makepeace, supra at 71, 79 I.D. at 397. See also Stephen Kenyon, 51 IBLA 368, 374-75 (1980).

\* \* \* Therefore, even though the State selection may have been void or voidable, the notation itself precluded appropriation of the land until canceled on such records.

\* \* \* In addition, the applicable regulations, 43 CFR 2091.6-4 and 2627.4(b), attribute a segregative effect to the filing of a State selection application. This may be distinguished from the segregative effect of noting the State selection on the public land records. See Margaret L. Klatt, 23 IBLA 59, 61 (1975). Moreover, the segregative effect of filing will operate regardless of the applicability of the notation rule. See Estate of Guy C. Groat, Jr., 46 IBLA 165, 172-73 (1980). The only limitation is that the selection must be "regular on its face." State of New Mexico, 46 L.D. 217, 222 (1917), overruled on other grounds, 48 L.D. 97 (1921). \*  
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The filing of a State selection application segregates the land from all subsequent appropriations, including locations under the mining laws regardless of whether the selection was valid, void, or voidable. [Emphasis in original; footnotes omitted.]

Id. at 366-67. The segregative effect of a State of Alaska selection application is operative on the land for which the State has applied from the date of filing and remains in effect until the State's application is finally disposed of and duly noted on BLM's public land records. However, the ultimate disallowance of the State's application will neither negate the segregative effect of its filing on the land, nor validate nunc pro tunc any claim initiated during the period when the land was so segregated. Andrew Petla, 43 IBLA 186 (1979). See also Ronald R. Kotowski, 82 IBLA 317 (1984).

The records forwarded to the Board for this review do not indicate whether the State's selection applications have been adjudicated by BLM and a final disposition achieved in each case. There is also the possibility that each may have been automatically terminated pursuant to the provisions of 43 CFR 2627.4(b). Final disposition of the applications, however, does not change the result in this case because the notations on the official BLM tract records for the township in question reflecting that the applications were still pending at the time appellants initiated their locations were sufficient to perpetuate the segregative effect and preclude appellants' appropriation of the land. See Shiny Rock Mining Corporation (On Reconsideration), 77 IBLA 261 (1983). We find that BLM properly found the claims null and void ab initio because they were located on segregated lands.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appealed decision is affirmed.

Franklin D. Arness  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Wm. Philip Horton  
Chief Administrative Judge.

